

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

Case No. **3:14-cv-01092-BR**

Date: **December 22, 2015**

Case Title: **Gessele et al v Jack in the Box, Inc.**

Presiding Judge: **Anna J. Brown**

Courtroom Deputy: **Bonnie Boyer**

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DOCKET ENTRY: Order

The Court has reviewed Defendant's Motion (#27) for Partial Summary Judgment; Plaintiffs' Motion (#32) for Partial Summary Judgment (Statute of Limitations) and to Establish Tolling for FLSA Collective Members; and Plaintiffs' Motion (#33) for Partial Summary Judgment on Jack in the Box's 8th (Private Right Of Action), 9th (Due Process) and 12th (Preemption) Affirmative Defenses and makes the following rulings:

The Court DENIES as premature the portion of Defendant's Motion (#27) for Partial Summary Judgment and Plaintiffs' Motion (#32) for Partial Summary Judgment relating to whether the California putative class members are subject to binding settlements entered into in Frederick et al v. Jack-In-The-Box, Inc. et al, California Superior Court (Riverside County) Case No. RIC501044 and Olvera et al v. Jack in the Box Inc. et al, California Superior Court (San Diego County) Case No. 37-2013-00072707-CU-OE-CTL. The Court grants the parties leave to raise anew the issue of these settlements after the parties have conducted limited, concise, targeted discovery related to the settlements and the claims asserted in those actions such that a clear record can be made regarding their effect and after the Court has issued an Opinion and Order on the portions of the parties' Motions for Partial Summary Judgment remaining after this Order.

The Court DENIES as premature the portion of Defendant's Motion (#27) for Partial Summary Judgment and Plaintiffs' Motion (#32) for Partial Summary Judgment relating to Defendant's status as a joint employer. The Court grants the parties leave to raise anew the issue of these settlements after the parties have conducted limited, concise, targeted discovery related to Defendant's status as a joint employer and after the Court has issued an Opinion and Order on the portions of the parties' Motions for Partial Summary Judgment remaining after this Order.

The Court DENIES as premature the portion of Plaintiffs' Motion (#33) for Partial Summary Judgment as to Defendant's Ninth Affirmative Defense. It is unclear on this record whether Plaintiff intends to assert the \$200 statutory penalty applies to each pay period. In addition, it is not certain that Plaintiffs will succeed on any underlying claims that would entitle them to the statutory penalty at issue. If Plaintiffs succeed on underlying claims that would entitle them to the statutory penalty at issue and if Plaintiffs assert the \$200 statutory penalty applies to each pay period, Plaintiffs may raise anew the issue of Defendant's Ninth Affirmative Defense in due course.

The Court will set oral argument on the remaining issues in the parties' pending Motions.